

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**MIGUEL MENDOZA,**

**Defendant.**

**Case No. 01-CR-03070-02-MDH**

**ORDER**

Before the Court are Defendant's *pro se* motions: motion for consideration of a 3582(c) and 3553a factors (Doc. 236); motion to request counsel (Doc. 237); motion to proceed IFP (Doc. 238); and motion to file supportive brief at a later date. (Doc. 239). The government has filed an opposition and the time to file a reply has expired. The motions are ripe for review.

First, Defendant's current motion seeks to have his combined sentence of 324 months' imprisonment reduced to time served. Defendant was sentenced for conspiracy to distribute in excess of 500 grams or more of methamphetamine and two counts of distribution in excess of 50 grams of methamphetamine. Defendant requests the Court correct sentencing errors, stating that Counts Eight and Nine were ran consecutive, resulting in an illegal sentence, and that defense counsel was ineffective in failing to raise this issue prior to sentencing.

As set forth in the government's response, Defendant's motion, although filed as a motion for compassionate release, is in essence a motion that would be considered pursuant to 28 U.S.C. § 2255. Further, Defendant has already filed a § 2255 motion. As a result, this Court lacks jurisdiction to review a successive motion because it has not been certified by the Eighth

Circuit.<sup>1</sup> The Court **DENIES** Defendant's motion for lack of jurisdiction for the reasons set forth in the government's response.

In addition, the Court finds no basis for the appointment of counsel in this matter and **DENIES** Defendant's motion for appointment of counsel.

Finally, the Court **DENIES** Defendant's motion to proceed *in forma pauperis* and "motion to file supportive brief at a later date" as moot.

**IT IS SO ORDERED.**

DATED: November 8, 2022

/s/ Douglas Harpool  
**DOUGLAS HARPOOL**  
**UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> The Government further states that even if this Court were to consider Defendant's claims Defendant was not given a consecutive sentence on Counts Eight and Nine so his claim would fail even if considered.